

Opposition to
Application of Derek S. Mattioli (BZA Case #19037)
1375 Massachusetts Ave SE

The Board of Zoning Adjustment should deny Derek S. Mattioli's request for variances from the lot occupancy, rear yard, open court requirements and non-conforming structure provisions for the following reasons:

1) **100% Lot Coverage** – The 2-story structure that Derek Mattioli's at the rear of 1375 Massachusetts Ave SE would create of lot coverage of 100% for a lot zoned at R-4 (allowing 60% lot coverage as a matter of right).¹ The property is within the Capitol Hill Historic District and the proposed structure would be visible from Independence Avenue. Section 3103.2 of the Zoning Regulations sets an extremely high and specific standard for a zoning variance. The standard for a variance from the lot coverage requirements requires a finding that by reason of "exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property," the strict application of the Zoning Regulations would result in "exceptional practical difficulties or exceptional and undue hardship" upon the owner. This hardship may result from physical characteristics which make the property "unique or difficult to use." A variance can only be approved if there is a finding that the granting of the variance will not cause substantial detriment to the public good and will not be inconsistent with the general intent and purpose of the Zoning Regulations.

In his application, Derek Mattioli does not assert any "exceptional practical difficulties or exceptional and undue hardship." Derek Mattioli states that he "wishes" to build a 2-story structure because he deems the rear space "unusually small" and of limited use. This proposed 2-story structure, adversely affects the surrounding area. It blocks our light and air, and it adds building density to an area already too dense.² In addition, it is clearly visible from Independence Avenue. There is no "exceptional practical difficulty" or "exceptional and undue hardship" justifying a variance. Derek Mattioli's rowhouse has been inhabited for many decades without this rear structure. There was no "exceptional and undue hardship" when he bought it. The rowhouse is a full three-bedroom house with three floors including the basement. In addition, Derek Mattioli has apparently rented out his basement. So apparently he felt he had enough space to create a separate living unit in the basement and rent it out. (An online search

¹ See the Notes and Computations in the Memorandum from Matthew Le Grant, Zoning Administrator, included in the case file.

² See Opponent's Exhibit A

of DCRA's website shows no Basic Business License, Certificate of Occupancy or building permits for the basement at 1375 Massachusetts Ave SE.)

The same applies to the rear yard and court requirements that are violated by this proposed 2-story structure. For example, the 2-story structure will leave rear yard of 1 foot where 20 feet is the rear yard requirement. One of the fundamental purposes of the Zoning Regulations is to regulate the density of buildings. If this rear addition were to be approved, then every owner on our end of the block could make the same argument to cover virtually 100% of their lots. The buildings are already too dense at our end of the block without Derek Mattioli's illegal rear 2-story structure.

There are a dozen rowhouses near 1375 Massachusetts Ave SE that are located on lots of a size comparable to that of Derek Mattioli's. Five of these lots are smaller than 1375 Massachusetts Ave SE. Nothing distinguishes 1375 Massachusetts Ave SE as having "exceptional or undue hardship" under section 3103.2 of the Zoning Regulations. In addition, there are many triangular blocks on Capitol Hill and throughout Washington, DC, creating many lots comparable to Derek Mattioli's. In fact, every one of the owners of these properties could make the same claims as those made by Derek Mattioli. If they built what Derek Mattioli proposes to build, we would have a slot canyon on the 3-foot wide public walkway that gives access to the rear of the rowhouses at the end of the block. None of these homes have a 2-story structure as Derek Mattioli proposes. None have or appear ever to have had sleeping porches. Sleeping porches have roofs—there is no roof on Derek Mattioli's plans. There is no public record on DCRA's website showing that any of them received a zoning variance for 100% lot occupancy. As Derek Mattioli notes in his application some of these neighboring decks may exceed 100% lot occupancy and may not be legal.

A neighbor directly across the 3 foot wide rear accessway has set up a patio on the ground with a table and chairs in a space apparently smaller than Derek Mattioli's. The condition of his rear yard is uniquely in his control, it's poor condition should not entitle him to the extraordinary benefit of a 100% lot occupancy 20 story structure.

In addition, 1375 Massachusetts Ave SE is within the Capitol Hill Historic District. On June 11, 2015 the Capitol Hill Restoration Society voted to oppose this owner's request for variances.

2) The BZA already rejected Derek Mattioli's arguments in the BZA's Decision and Order on Application No. 18556 entered on June 30, 2014.

Derek Mattioli previously built an illegal 1-story structure on essentially the same footprint as his proposed 2-story structure. DCRA inspector Martin Olsen inspected the illegal construction at 1375 Massachusetts Ave SE, and he placed a Stop-Work Order on it. Inspector Olsen observed "a fully enclosed room addition at the rear of property"

with "electric installed" and "gas piping installed". Inspector Olsen noted numerous building and safety issues with the construction. In an attempt to obtain retroactive approval of his illegal construction, Derek Mattioli made BZA Application No. 18556 making many of the same arguments that he makes with his current BZA application. The BZA rejected Derek Mattioli's arguments in its Decision and Order on Application No. 18556, stating:³

"...The Board does not find that the subject property is faced with an exceptional situation or condition, or that the strict application of the Zoning Regulations would create a practical difficulty to the Applicant as owner of the property. . ."

"...the nonconforming nature of the property is not unusual among properties in the same square or in the general vicinity, and does not itself create an exceptional situation or condition. The Board does not credit the Applicant's contention that the lot is extraordinary small and shallow. . ."

"...According to the Office of Planning, which found no exceptional situation or practical difficulty in this application, "it is common for properties in the Capitol Hill Historic District to be smaller than required by the Zoning Regulations" and the Applicant's dwelling is comparable in size to neighboring dwellings on similar lots. . ."

"...Nor does the Board credit the Applicant's contention that the rear yard is not otherwise usable. Without the addition, the rear yard at the subject property is not exceptionally small. . ."

"...The Board concurs with OP's conclusion that approval of the application would cause substantial detriment to the public good. The addition, as built, almost completely eliminated any rear yard setback separating the dwelling on the subject property from the public walkway that abuts the rear lot line. . ."

To approve the current application, the BZA would have to overturn the BZA's Decision and Order on Application No. 18556.

3) **Bad Faith** – DCRA records indicate that on April 22, 2009, before the construction of the illegal rear addition at 1375 Massachusetts Ave SE, the applicant for a permit to build onto the rear of 1375 Massachusetts Ave SE was advised that "the way he showed Plat (new enlarged Porch) had lot occupancy, court and rear yard issues". Note that the plat was issued to Mary Donovan. DCRA records show that a separate application was subsequently made including detailed plans to "replace" the existing landing at the rear door of 1375 Massachusetts Ave SE. Building Permit #B0907079

³ See Pages 5 and 6 of the Decision and Order on Application No. 18556 entered on June 30, 2014, in the case file. See Opponent's Exhibit B

was issued on July 16, 2009 to replace the existing concrete porch with a wood porch of the "same dimension".⁴ On the face of the Building Permit, the construction is specifically limited to the "same dimension", and therefore it would not need zoning review. In spite of the limitations on their Building Permit and disregarding the specific drawings they submitted in their permit application, the owners proceeded to build their illegal rear addition. It appears that they submitted a set of plans in order to lead DCRA to conclude that no zoning review was necessary because their plans showed that construction would be limited to the same dimension as the existing rear concrete landing. The owners built a rear addition covering virtually the whole lot.

Given the bad faith that Derek Mattioli demonstrated in his illegal construction, he should not be granted the extraordinary benefit of 100% lot occupancy with permission to obliterate the rear yard and open court requirements.

4) **Bad Plans** – Derek Mattioli states that his proposed 2-story structure "would provide a second emergency exit from the house, making it much safer." He neglects to mention that in his illegal construction, he bricked up the prior rear door and took out steps leading to the ground. He tore down his illegal addition but has not returned the rear wall to its original condition. The plans that Derek Mattioli submitted with his application do not show any changes the rear wall and they show no steps going to the ground. It appears that Derek Mattioli once again intends to build beyond the scope of his plans. In addition, the basement egress comes out below grade and requires steps to bring it up to grade level. To maintain the required 6'8" head room, it appears that Derek Mattioli will have to cut his steps out into the 3 foot wide public walkway. However this incursion into the limited public space is not shown on his plans or plat.

⁴ See Opponent's Exhibit C

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